

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DORIS M. FISHER</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 192,243
<b>STATE OF KANSAS</b>	)	
<b>(UNIVERSITY OF KANSAS)</b>	)	
Respondent	)	
AND	)	
	)	
<b>STATE SELF-INSURANCE FUND</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals from an Award on Review and Modification entered by Administrative Law Judge Bryce D. Benedict on July 15, 1998.

**APPEARANCES**

Chris Miller of Lawrence, Kansas, appeared on behalf of claimant. Scott M. Gates of Topeka, Kansas, appeared on behalf of respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Appeals Board has reviewed and considered the record listed in the Award.

**ISSUES**

The Administrative Law Judge denied claimant's request to modify the Agreed Award entered in this case on March 1, 1995. Claimant appeals from that decision and contends facts demonstrate the original Award was inadequate.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes the Award by Judge Benedict should be affirmed. Claimant has not shown a change of circumstances to support modification of the original Agreed Award.

On March 1, 1995, claimant accepted an Agreed Award based upon a 20 percent permanent partial general body disability for bilateral upper extremity injuries from her work as a dispatcher in respondent's parking control department. The Agreed Award makes no mention of work disability. Instead, it states the extent of disability is supported by the 20

percent functional impairment rating of Dr. Peter V. Bieri. But the record shows claimant was not working at the time of the Agreed Award. She had left employment in August 1994 because of conflicts with her supervisor.

In support of this application to modify the Agreed Award, claimant presents testimony that she expected, when she agreed to the Award for 20 percent, that she would be able to find employment. She has not been able to do so. Claimant also presents the testimony of Mr. Michael J. Dreiling. Mr. Dreiling testified that claimant is realistically unemployable in the open labor market. He reaches this conclusion on the basis of medical reports, reports from Dr. Bieri and Dr. Lynn D. Ketchum, which existed at the time claimant entered the Agreed Award. The restrictions recommended in those reports, together with preexisting medical conditions and claimant's limited work experience and skills, render claimant, in Mr. Dreiling's opinion, unemployable.

What claimant has not presented is any evidence that anything has changed since the date of the Agreed Award. The Board agrees that change in the physical condition of the claimant is not the only circumstance which would justify modification of an award. Redgate v. City of Wichita, 17 Kan. App. 2d 253, 836 P.2d 1205 (1992). But review and modification under K.S.A. 44-528 is not intended as a means of retrying the case to challenge the original findings or award. There must be some change from the time of the original award. Gile v. Associated Co., 223 Kan. 739, 576 P.2d 663 (1978). The record contains no evidence of a change which would warrant modification.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award on Review and Modification entered by Administrative Law Judge Bryce D. Benedict on July 15, 1998, should be, and the same is hereby, affirmed.

### **IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1998.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Chris Miller, Lawrence, KS  
Scott M. Gates, Topeka, KS  
Bryce D. Benedict, Administrative Law Judge  
Philip S. Harness, Director